

**THE FEDERAL JUDICIAL CENTER**  
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WASHINGTON, DC 20002-8003

April 12, 2007  
(Revised June 15, 2007)

**Memorandum**

**To:** Hon. Michael Baylson  
**From:** Joe Cecil and George Cort  
**Subject:** Estimates of Summary Judgment Activity in Fiscal Year 2006

The following tables contain the results of our analyses of summary judgment activity in 179,969 cases terminated in the 78 federal district courts that had fully implemented the CM/ECF reporting system in Fiscal Year 2006. The analyses focus on motions for summary judgment, which are often used to exclude parties and narrow issues without disposing of the case. This is especially true of civil rights cases that name multiple parties. These figures exclude class action cases, multi-district litigation cases, and reopened cases. The tables indicate the following:

- Nationwide, approximately 17 motions for summary judgment are filed for every 100 cases terminated. Of course, some cases may have more than one motion filed, so the proportion of actual cases with summary judgment motions is somewhat lower. This estimate is based on all terminated cases, including those cases terminated before the issue was joined and before a summary judgment motion would have been appropriate. (Table 1)
- Summary judgment activity in the circuits ranges from a low of 7 motions per 100 cases in the Second Circuit to a high of 34 motions per 100 cases in the District of Columbia Circuit. (Table 1)
- Summary judgment activity varies greatly within circuits, due in part to differences in the composition of the districts' caseloads. Some of the districts with high rates of summary judgment activity also have a high percentage of social security cases, which are typically resolved by the grant or denial of a summary judgment motion. Some of the districts with especially low rates of summary judgment motions have local rules or standing orders that encourage consultation with the judge before filing a summary judgment motion. (Table 1)
- Approximately 9 percent of the motions are for partial summary judgment, and less than 1 percent of the motions seek summary judgment under FRCivP 54. (Table 2)

- Summary judgment activity varies greatly across types of cases, from a low of 9 motions per 100 cases in torts cases to a high of 28 motions per 100 cases in civil rights cases. Summary judgment activity in personal injury product liability cases is difficult to assess due to the frequent consolidation of such cases in class actions and multi-district litigation proceedings. (Table 3)
- Approximately 60 percent of the summary judgment motions are granted in whole or in part, with a somewhat higher rate of motions granted in civil rights cases. (Table 3)
- Over 70 percent of the summary judgment motions in employment discrimination cases are granted in whole or in part, with considerable variation across circuits and across districts within circuits. Some of the districts with high rates of motions granted also have ADR procedures that resolve many cases before a summary judgment motion is filed. (Table 4)

### Methodology

The information in the following tables was extracted from the CM/ECF replication database. The individual courts follow somewhat different data recording practices and this may account for some of the variation across districts. For example, summary judgment motions under FRCivP 54 may simply be recorded as summary judgment motions in some districts. Summary judgments arising from a magistrate judge's report and recommendation that is adopted by the district judge may not be noted other than as adoption of the magistrate judge's report. Motions to dismiss that become summary judgment motions when affidavits are filed in support of the motion may not be properly identified as summary judgment motions in all districts. These tables exclude cases designated as class actions and multi-district litigation transfers because summary judgment activity may not be recorded separately for each case that is affected by a consolidated motion. Finally, these tables exclude cases that are reopened, because such cases may not indicate summary judgment activity that occurred earlier in the case, before it was reopened. Together these exclusions eliminated almost 35,000 product liability personal injury cases, 7,000 asbestos cases, and smaller numbers of other types of cases terminated in Fiscal Year 2006.

Please let me know if you wish to discuss these tables or wish to see other analyses.

cc: Hon. Lee Rosenthal  
Professor Edward Cooper  
Professor Richard Marcus

**Table 1: Summary Judgment Motions Across Circuits and Districts**

	<b>SJ Motions per 100 Case Terminations</b>	<b>SJ Orders Granting Motion</b>
<b>TOTAL (28,748 motions)</b>	<b>17</b>	<b>60%</b>
<b>First Circuit (862 motions)</b>	<b>16</b>	<b>55%</b>
Highest Rate Among Districts	32	57%
Lowest Rate Among Districts	13	51%
<b>Second Circuit (1,276 motions)</b>	<b>7</b>	<b>63%</b>
Highest Rate Among Districts	25	68%
Lowest Rate Among Districts	4	54%
<b>Third Circuit (3,013 motions)</b>	<b>16</b>	<b>56%</b>
Highest Rate Among Districts	32	64%
Lowest Rate Among Districts	13	47%
<b>Fourth Circuit (2,626 motions)</b>	<b>17</b>	<b>60%</b>
Highest Rate Among Districts	39	75%
Lowest Rate Among Districts	13	49%
<b>Fifth Circuit (2,338 motions)</b>	<b>11</b>	<b>60%</b>
Highest Rate Among Districts	21	65%
Lowest Rate Among Districts	8	52%
<b>Sixth Circuit (3,328 motions)</b>	<b>20</b>	<b>59%</b>
Highest Rate Among Districts	37	70%
Lowest Rate Among Districts	14	57%
<b>Seventh Circuit (2,999 motions)</b>	<b>21</b>	<b>58%</b>
Highest Rate Among Districts	40	65%
Lowest Rate Among Districts	13	56%
<b>Eighth Circuit (2,176 motions)</b>	<b>18</b>	<b>59%</b>
Highest Rate Among Districts	36	68%
Lowest Rate Among Districts	13	26%
<b>Ninth Circuit (4,803 motions)</b>	<b>18</b>	<b>59%</b>
Highest Rate Among Districts	47	71%
Lowest Rate Among Districts	11	40%
<b>Tenth Circuit (1,542 motions)</b>	<b>18</b>	<b>59%</b>
Highest Rate Among Districts	22	67%
Lowest Rate Among Districts	14	54%

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<b>Eleventh Circuit (2,867 motions)</b>	<b>16</b>	<b>59%</b>
Highest Rate Among Districts	25	73%
Lowest Rate Among Districts	8	48%
<b>District of Columbia (918 motion)</b>	<b>34</b>	<b>68%</b>

**Table 2: Types of Summary Judgment Motions Across Circuits**

	Type of Motion		
	Summary Judgment	Partial Summary Judgment	Rule 54 Motion
<b>TOTAL</b>	<b>91%</b>	<b>9%</b>	<b>0%</b>
First Circuit	91%	8%	2%
Second Circuit	95%	4%	1%
Third Circuit	93%	7%	0%
Fourth Circuit	95%	5%	0%
Fifth Circuit	89%	10%	0%
Sixth Circuit	93%	7%	0%
Seventh Circuit	93%	7%	0%
Eighth Circuit	93%	6%	0%
Ninth Circuit	83%	17%	0%
Tenth Circuit	83%	16%	1%
Eleventh Circuit	90%	9%	1%
DC Circuit	94%	6%	0%

**Table 3: Summary Judgment Activity by Type of Case**

NOS Code - Description	Total FY2006 Cases Term'd	Total SJ Motions Filed	SJ Motions per 100 Cases	Orders Decided	
				Denied	Granted
<b>TOTAL</b>	<b>205,058</b>	<b>30,556</b>	<b>15</b>	<b>40%</b>	<b>60%</b>
<b>Contracts</b>	<b>22,489</b>	<b>4,682</b>	<b>21</b>	<b>47%</b>	<b>53%</b>
110 Insurance	7229	2071	29	46%	54%
120 Marine Contract Actions	1295	118	9	50%	50%
130 Miller Act	352	28	8	63%	37%
140 Negotiable Instruments	307	45	15	50%	50%
160 Stockholders Suits	280	25	9	64%	36%
190 Other Contract Actions	12642	2347	19	47%	53%
195 Contract Product Liability	209	39	19	46%	54%
196 Franchise	175	9	5	44%	56%
<b>Tort</b>	<b>30,574</b>	<b>2,871</b>	<b>9</b>	<b>46%</b>	<b>54%</b>
310 Airplane Personal Injury	237	24	10	43%	57%
315 Airplane Product Liability	74	22	30	59%	41%
320 Assault, Libel, and Slander	596	78	13	32%	68%
330 Federal Employers Liability	645	89	14	39%	61%
340 Marine Personal Injury	1358	204	15	54%	46%
345 Marine - Product Liability	25	9	36	44%	56%
350 Motor Vehicle Pers Injury	3864	363	9	52%	48%
355 Motor Vehicle Prod Liability	463	92	20	39%	61%
360 Other Personal Injury	7752	987	13	44%	56%
362 Medical Malpractice	1089	185	17	47%	53%
365 Personal Injury - Prod Liab	11505	581	5	45%	55%
368 Asbestos - Prod Liability	1704	3	0	33%	67%
370 Other Fraud	1262	234	19	47%	53%
<b>Civil Rights</b>	<b>32,277</b>	<b>8,924</b>	<b>28</b>	<b>30%</b>	<b>70%</b>
440 Other Civil Rights	14319	3962	28	32%	68%
441 Civil Rights Voting	117	28	24	35%	65%
442 Civil Rights Jobs	15679	4716	30	27%	73%
443 Civ Rts Accommodation	592	124	21	53%	47%
444 Civil Rights Welfare	40	4	10	0%	100%
445 Am Disab Act Employment	509	48	9	25%	75%
446 Am Disab Act Other	1021	42	4	53%	48%

NOS Code - Description	Total FY2006 Cases Term'd	Total SJ Motions Filed	SJ Motions per 100 Cases	Orders Decided	
				Denied	Granted
<b>Prisoner</b>	<b>50,403</b>	<b>3,418</b>	<b>7</b>	<b>36%</b>	<b>64%</b>
510 Pris Pet - Vacate Sentence	7118	65	1	50%	50%
530 Pris Pet - Habeas Corpus	19619	497	3	46%	54%
535 Habeas Corp Death Pen	161	27	17	44%	56%
540 Prisoner -Mandamus Other	1084	26	2	42%	58%
550 Prisoner - Civil Rights	14052	1652	12	35%	65%
555 Prisoner - Prison Condition	8369	1151	14	33%	67%
<b>Other</b>	<b>69,315</b>	<b>10,661</b>	<b>15</b>	<b>47%</b>	<b>53%</b>
150 Overpayments - Judgment	271	43	16	72%	28%
151 Overpayments - Medicare	187	107	57	17%	83%
152 Recovery Student Loans	2189	38	2	18%	82%
153 Recovery of Vet Benefits	11	2	18	0%	100%
210 Land Condemnation	215	7	3	14%	86%
220 Foreclosure	2567	132	5	24%	76%
230 Rent, Lease, Ejectment	117	19	16	32%	68%
240 Torts to Land	369	49	13	40%	60%
245 Tort to Land Prod Liability	96	21	22	12%	88%
290 Other Real Property Actns	680	142	21	58%	42%
371 Truth in Lending	458	53	12	38%	62%
380 Other Pers Prop Damage	949	160	17	42%	58%
385 Prop Damage - Prod Liab	413	70	17	40%	60%
400 State Re-Appportionment	3	4	133	100%	0%
410 Antitrust	397	103	26	47%	53%
423 Bankruptcy Withdrawal	706	79	11	46%	54%
430 Banks and Banking	184	25	14	23%	77%
450 Interstate Commerce	420	67	16	57%	43%
460 Deportation	120	6	5	67%	33%
470 Civil (RICO)	589	185	31	65%	35%
480 "Consumer Credit"	1423	63	4	48%	52%
490 "Cable Sat TV"	685	9	1	14%	86%
610 Agricultural Acts	27	1	4	100%	0%
625 Drug Related Seizure	1246	56	4	44%	56%
690 Forfeiture and Penalty	673	38	6	50%	50%
710 Fair Labor Standards Act	2779	300	11	42%	58%
720 Labor/Mgmt Relations Act	1246	354	28	37%	63%
730 Labor/Mgmt Report	69	22	32	18%	82%
740 Railway Labor Act	102	42	41	44%	56%
790 Other Labor Litigation	1182	247	21	37%	63%
791 ERISA	10052	1367	14	46%	54%
820 Copyright	5072	279	6	53%	47%
830 Patent	2352	645	27	53%	47%

NOS Code - Description	Total FY2006 Cases Term'd	Total SJ Motions Filed	SJ Motions per 100 Cases	Orders Decided	
				Denied	Granted
840 Trademark	3318	333	10	50%	50%
850 SEC	1296	143	11	55%	45%
861 Medicare	46	5	11	60%	40%
862 Black Lung	16	2	13	50%	50%
863 D.I.W.C./D.I.W.W.	6296	1285	20	54%	46%
864 S.S.I.D.	6927	1721	25	52%	48%
865 R.S.I.	615	212	34	49%	51%
870 Tax Suits	1175	208	18	44%	56%
871 IRS 3rd Party Suits	88	1	1	0%	100%
875 Customer Challenge	15	1	7	100%	0%
890 Other Statutory Actions	9842	1420	14	41%	59%
891 Agricultural Acts	336	45	13	62%	38%
892 Economic Stabilization Act	4	4	100	50%	50%
893 Environmental Matters	877	270	31	48%	52%
895 FOIA	280	179	64	30%	70%
950 State Statute Constitutional	262	90	34	47%	53%
990 Other	73	7	10	50%	50%

Note: This table excludes the following case types that did not reveal any summary judgment activity: Bankruptcy Appeals (2450 cases); Food and Drug Acts (46); Liquor Laws (2); Airline Regulations (4); Occupational Safety/Health (9); Selective Service (16); Energy Allocation Act (4); and Appeal of Fee - Equal Access to Justice (9). Motions granted in part and denied in part are recorded as granted rather than denied. Orders with no indication of dispositive action are excluded from the table.

**Table 4: Summary Judgment Activity in Employment Discrimination Cases**

<b>CIRCUIT</b>	<b>DISTRICT*</b>	<b>Percent Granted (in whole or in part)</b>
<b>TOTAL</b>		<b>73%</b>
<b>FIRST</b>		<b>56%</b>
	Highest Rate Among Districts	60%
	Lowest Rate Among Districts	48%
<b>SECOND</b>		<b>76%</b>
	Highest Rate Among Districts	82%
	Lowest Rate Among Districts	71%
<b>THIRD</b>		<b>69%</b>
	Highest Rate Among Districts	85%
	Lowest Rate Among Districts	54%
<b>FOURTH</b>		<b>74%</b>
	Highest Rate Among Districts	85%
	Lowest Rate Among Districts	67%
<b>FIFTH</b>		<b>78%</b>
	Highest Rate Among Districts	86%
	Lowest Rate Among Districts	66%
<b>SIXTH</b>		<b>73%</b>
	Highest Rate Among Districts	78%
	Lowest Rate Among Districts	67%
<b>SEVENTH</b>		<b>75%</b>
	Highest Rate Among Districts	79%
	Lowest Rate Among Districts	68%
<b>EIGHTH</b>		<b>70%</b>
	Highest Rate Among Districts	87%
	Lowest Rate Among Districts	59%
<b>NINTH</b>		<b>74%</b>
	Highest Rate Among Districts	93%
	Lowest Rate Among Districts	59%
<b>TENTH</b>		<b>72%</b>
	Highest Rate Among Districts	79%
	Lowest Rate Among Districts	64%

<b>ELEVENTH</b>		<b>75%</b>
	Highest Rate Among Districts	95%
	Lowest Rate Among Districts	56%
<b>DC</b>		<b>58%</b>

\*Includes the 65 federal district courts that had fully implemented the CM/ECF system in FY2006 and had more than 15 employment discrimination cases (i.e., nature of suit code 442) with summary judgment orders terminated during that year.